



**THE STATE BAR OF CALIFORNIA  
COMMITTEE OF BAR EXAMINERS/OFFICE OF ADMISSIONS**

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**GUIDELINES GOVERNING THE INTERPRETATION AND APPLICATION OF  
CHAPTER 6 OF THE *ADMISSIONS RULES***

These guidelines govern the interpretation and application of Chapter 6 of the *Admissions Rules* pursuant to the provisions of Rule 4.71(C) of the *Admissions Rules*.

Chapter 6. Conduct At Examinations

Rule 4.70 Conduct required at examinations

Applicants are expected at all times to maintain a professional attitude towards other applicants, staff, proctors and other examination personnel. Chapter 6 Notices (*Notice*) will be issued to any applicant who is believed to have violated examination rules and policies. State Bar staff and proctors at the individual test centers are authorized to issue *Notices* in conformance with the procedures that are established, which in some cases may require consultation with State Bar management prior to issuance of a *Notice*, for violations by applicants of examination rules and policies.

Rule 4.71 Reports of conduct violations

- (A) Immediately following administration of an examination, a report of all *Notices* issued will be provided to the Senior Director, Admissions or his or her designee. In accordance with established procedures, the Senior Director, Admissions or his or her designee will report the *Notices* that were issued during the examination, which require review by the Committee's Subcommittee on Operations and Management, at the Committee's next regularly scheduled meeting following administration of an examination.
- (B) The Operations and Management Subcommittee will either affirm or decline to affirm the *Notice*. If the Subcommittee agrees that a violation occurred, it will affirm the *Notice* and determine whether a sanction should be imposed, and if so, what the sanction will be. The affected applicant must be notified of the Subcommittee's determination within thirty days following the date of the meeting during which the matter was considered.
- (C) The Committee has established the following specific sanctions for certain undisputed conduct violations:
  - 1. A score of zero for any session during which an applicant is found to have brought an unauthorized electronic device, such as a cell phone, into the examination.

2. A deduction of ten scaled points from the total written scaled score, if an applicant who used a laptop computer to prepare his or her answers fails to upload his or her examination answers by the published deadline, unless good cause is established, as determined by the Senior Director, Admissions or his or her designee, that supports the late uploading of an applicant's examination files, such as a malfunction of the equipment or serious health condition.
3. A score of zero for each session of the examination, or for the grades for each of the answers not uploaded for each session, if an applicant who used a laptop computer to prepare his or her answers fails to upload his or her examination answers within two weeks of the published final deadline.

An administrative hearing is not available to an applicant who has violated examination rules or policies and for which a specific sanction, which are detailed above, has been determined.

#### Rule 4.72 Request for administrative hearing on conduct violation

- (A) Upon receipt of an Applicant's written request for an administrative hearing, the Senior Director, Admissions will determine the members and chair of the hearing panel and the date, time and location of the hearing. If possible, the hearing will be held in the State Bar offices located nearest to the applicant's address of record. Notice of the date, time and location of the hearing will be communicated to the applicant no later than sixty days after receipt of the request.

#### Rule 4.73 Procedure for an administrative hearing on conduct violation

- (A) All Chapter 6 hearings will be conducted in accordance with the following regulations and procedures:
  - 1) Following notice of the scheduled date, time and location of the hearing, the Senior Director, Admissions or his/her designee will assume responsibility for communicating with the applicant, or if represented by counsel, with his or her attorney regarding the hearing process and any evidence that may be in available.
  - 2) The proceedings are considered confidential and attendance will be limited to the applicant and his/her counsel, if represented, hearing panel members, the Senior Director for Admissions or his or her designee, representative(s) from the State Bar of California's Office of General Counsel, witnesses and necessary staff as designated by the State Bar of California's Senior Director, Admissions. Members of the public are not permitted to attend.
  - 3) An applicant may attend the hearing with counsel. Counsel will not participate in the conference; however, an applicant is permitted to confer with his or her counsel at any time, off the record. Only the applicant will provide oral or written statements and may present documentary evidence.

No person other than applicant's counsel may be present with the applicant at a Chapter 6 administrative hearing.

- 4) The issues that will be discussed during the hearing will be set forth in the affirmation of the *Notice*, which will be sent shortly after the Committee takes action affirming the *Notice*. The discussion may extend to issues that arise during the hearing.
- 5) Information and evidence associated with the issuance of the *Notice* will be presented by the Office of Admissions' Director for Operations and Management or his/her designee. The Senior Director, Admissions or his or her designee will assist the Committee as needed during the course of the hearing process.
- 6) Any relevant evidence is admissible, regardless of the rules of evidence.
- 7) With the permission of the Hearing Panel Chair, witnesses may be called by either the applicant or the Office of Admissions staff member presenting the matter.
- 8) The Hearing Panel Chair may allow nonparty witnesses to participate through electronic means, if the parties to the hearing have an opportunity to participate in and hear while the participation of the nonparty witness is taking place.
- 9) The administrative hearing will be recorded, and if the applicant makes a written request within ninety (90) days of the administrative hearing, he or she will be provided with a duplicate recording of the hearing no later than thirty (30) days after the request was received.
- 10) The Committee has the burden of establishing by clear and convincing evidence that a Chapter 6 violation occurred and that the intended sanction is warranted.
- 11) For good cause shown, the Hearing Panel Chair may permit a continuance of the proceedings for an appropriate period of time. Requests for continuances of a Chapter 6 hearing must be received at least five (5) days before the scheduled hearing. If a request for postponement is received less than five (5) days before the scheduled conference, the Committee may make its determination on the *Notice* from the information before it, unless the applicant demonstrates good cause for not having requested the postponement sooner.
- 12) Except as noted below, members of the Hearing Panel are prohibited from engaging in ex parte communications regarding the substance of the allegations with the parties, Committee members, or any other interested persons, while a matter is pending before the panel.

- 13) Members of the Hearing Panel may communicate with each other, Counsel for the Committee, and the Office of Admissions staff regarding a pending matter.
  - 14) No applicant is entitled to recover attorney's fees or costs incurred in connection with a Chapter 6 administrative hearing proceeding.
- (B) The hearing panel's Findings and Recommendations must be drafted, finalized, signed and delivered to the applicant and his or her attorney, if represented, within thirty days of the administrative hearing. A copy of the Findings and Recommendations will be included on the agenda of the Committee's next regularly scheduled meeting.
- (C) By written notice, the applicant may request review by the Committee of the panel's Findings and Recommendations within ten days of service.

#### Rule 4.74 Review of Findings and Recommendations

If an applicant requests review of the panel's Findings and Recommendations within ten days of service, the matter will be considered by the Committee in closed session during its next regularly scheduled meeting. A copy of the entire file, which includes the documents reviewed during the hearing and any documents filed by the applicant in response to the initial *Notice* and during the hearing, will be included with the Committee's closed session agenda. No later than ten days following the date of the Committee's meeting, the Committee's final determination in the matter will be communicated to the applicant.

#### **Procedure**

The following is the procedure to be used regarding Chapter 6 conduct violations, which occur during and subsequent to administration of examinations administered by the Office of Admissions on behalf of the Committee of Bar Examiners (Committee). The procedure will be documented in the proctor training materials and where appropriate, included in the examination instructions communicated in advance of and during administration of the examination.

#### Issuance

*Notices* may be issued to examinees during the administration of the First-Year Law Students' Examination or the California Bar Examination for the following reasons:

1. Prohibited item is confiscated;
2. Examination answers are submitted in violation of examination rules, policies, procedures and/or instructions;
3. Examinee is observed writing, typing, erasing, marking, or otherwise making changes to his/her examination papers after the announcement to stop;

4. Examinee's conduct resulted in violation of security of and/or disrupted administration of the examination; and
5. Authorization is given by Office of Admissions' management to issue *Notice* regarding a specific incident.

It is preferable for the *Notice* to be issued by Office Admissions' staff; however, if circumstances do not permit first notifying staff, the *Notice* may be issued by a proctor. Office of Admissions' staff must be advised as soon as possible following the incident by the issuing proctor when a *Notice* is issued.

*Notices* may be issued to examinees following administration of the First-Year Law Students' Examination or the California Bar Examination for any of the following reasons:

1. Examination answers altered after the corresponding examination session has ended;
2. Examination answers are not uploaded in accordance with examination instructions; or the
3. *Notice* could not be issued during examination because examinee had already left the testing facility.

### Review

All *Notices* issued during administration of examinations will be reviewed by the Director for Operations and Management to verify the *Notices* were issued in accordance with established policies and procedures. *Notices* not issued in accordance with established policies and procedures may result in the matter not being pursued.

Office of Admissions' management staff is authorized to resolve *Notices* that were issued that relate to administrative matters where it does not appear that serious misconduct occurred.

*Notices* issued relating to allegations of serious misconduct may lead to specific sanction recommendations by Office of Admissions' management to the Committee.

### Reporting

*Notices* issued due to the confiscation of prohibited items may be resolved by the Director for Operations and Management, in consultation with the Senior Director, Admissions, and may not be included in the examination administration report to the Committee, unless Office of Admissions' management believes the incident warrants additional review.

*Notices* issued for other than confiscation of prohibited items, including those resolved by Office of Admissions management, will be included in the examination administration report to the Committee.

*Notices* not resolved by Office of Admissions' management will include a staff recommendation in the examination administration report to the Committee.

### Sanctions

If Office of Admissions management's review leads to a recommendation for sanctions, Office of Admissions' management will make the recommendation to the Committee's Subcommittee on Operations and Management in the examination administration report to the Committee and the matter will be processed in accordance with Chapter 6 of the *Admissions Rules*.